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Supreme Court, U.S.
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No. 90-

IN THE

Supreme Court of the United States

OCTOBER TERM, 1990

CORONATION SHIPPING COMPANY

and

THE UNITED KINGDOM MUTUAL STEAM SHIP ASSURANCE ASSOCIATION (BERMUDA) LIMITED,
Petitioners

v.

GLENN J. CREPPEL, JR.,
Respondent

Petition for a Writ of Certiorari to the Court of Appeal, Fifth Circuit, State of Louisiana

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PETITION FOR A WRIT OF CERTIORARI

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QUESTIONS PRESENTED

1. Whether a state appellate court violates the constitutional supremacy and uniformity of federal maritime law in imposing duties and standards of care stricter than those established by the maritime jurisprudence?

2. Does the constitutional supremacy and uniformity of federal maritime law require a state court reviewing a maritime case to apply uniform federal principles of review rather than inconsistent state review principles that allow the state appellate court to reevaluate conflicting evidence and substitute its fact findings for those of the trial court?

3. Whether a state appellate court, reviewing a jury verdict and judgment in a federal maritime case filed in state court under the "saving to suitors" clause of 28 U.S.C. § 1333, violates the constitutionally-mandated supremacy and uniformity of federal maritime law in applying a state standard of appellate review to (a) reverse a jury verdict and court judgment, (b) reweigh the evidence and redecide the facts, and (c) enter a contrary judgment, even though the jury's verdict was supported by substantial evidence?

LIST OF PARTIES AND RULE 29.1 LIST

The parties to the proceeding below were petitioners, Coronation Shipping Company (the owner of the ocean-going cargo vessel, M/V SEABRAVERY) and The United Kingdom Mutual Steam Ship Assurance Association (Bermuda) Limited (the vessel owner's protection and indemnity insurer), and respondent, Glenn J. Creppel, Jr. (plaintiff).

Additional parties below that are not before this Court are Commercial Union Insurance Company (the workers' compensation insurer of Mr. Creppel's employer who intervened in the lawsuit), Thenamaris Ship Management, Inc. (an agent for the M/T SEABRAVERY), and Mr. J.T. Doyle (the river pilot aboard the M/T SEABRAVERY at the time of the accident, who was named as a defendant). Thenamaris was dismissed from the case at the trial court by consent of the parties. Commercial Union did not appeal the jury verdict and trial court judgments and did not appear on appeal. See Appendix 1a-2a, *infra*. Pilot Doyle was dismissed from the case at trial, and no party appealed his dismissal.*

Petitioner, Coronation Shipping Company, certifies pursuant to this Court's Rule 29.1 that it has no parent companies or subsidiaries within the scope of the rule.

Petitioner, The United Kingdom Mutual Steam Ship Assurance Association (Bermuda) Limited, certifies pursuant to this Court's Rule 29.1 that it has no parent companies or subsidiaries within the scope of the rule.

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* Counsel for Commercial Union and for Mr. Doyle have been served with copies of this petition, as have counsel for respondent Creppel. Thenamaris was represented by undersigned counsel.

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Petition for a Writ of Certiorari to the Court of Appeal, Fifth Circuit, State of Louisiana

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PETITION FOR A WRIT OF CERTIORARI

Petitioners, Coronation Shipping Company and The United Kingdom Mutual Steam Ship Assurance Association (Bermuda) Limited, respectfully pray that a writ of certiorari issue to review the judgment and opinion of the Court of Appeal, Fifth Circuit, State of Louisiana, entered in the above-entitled proceeding on December 12, 1990.

OPINIONS BELOW

The opinion of the Court of Appeal, Fifth Circuit, State of Louisiana, entered on December 12, 1990, is reported at 572 So.2d 1051-58 and is reprinted in the appendix hereto, p. 1a, *infra.*

The order of the Supreme Court of Louisiana denying petitioners' request for a writ of certiorari or review, entered on February 22, 1991, is reported at 575 So.2d 390 and is reprinted in the appendix hereto, p. 15a, *infra.*

The jury verdict, judgment, and order denying respondent's post-trial motion for new trial or judgment notwithstanding the verdict, entered in the 24th Judicial District Court for the Parish of Jefferson, State of Louisiana, are unpublished and are reprinted in the appendix hereto, pp. 16a-21a, *infra.*

JURISDICTION

Respondent, Glenn J. Creppel, Jr., asserting his right to file his maritime personal injury claim in state court under the "saving to suitors" clause of 28 U.S.C. § 1333, filed suit in the 24th Judicial District Court, Parish of Jefferson, State of Louisiana. Respondent's claim subsequently was tried to a jury which, on October 4, 1989, rendered a verdict for petitioners exonerating them of all negligence. Appendix 16a, *infra.* On October 5, 1989, the trial court rendered judgment on the jury's verdict. Appendix 20a, *infra.* Respondent subsequently timely filed a motion for judgment notwithstanding the verdict or, in the alternative, for a new trial. The trial court entered judgment denying these motions on January 16, 1990. Appendix 23a, *infra.*

Respondent then timely appealed to the Court of Appeal, Fifth Circuit, State of Louisiana. The Court of Appeal entered its decision on December 12, 1990. 572 So.2d 1051; Appendix 1a, *infra.* Applying Louisiana principles of appellate review, the Court of Appeal reversed the jury verdict and trial judgment in favor of petitioners, substituted its own version of the facts for the verdict of the jury, and rendered judgment holding petitioners liable for respondent's injuries. *Id.* The Court

of Appeal remanded to the trial court to retry the quantum of respondent's damages.[1] *Id.*

On January 11, 1991, within the thirty days allowed by Louisiana Supreme Court Rule X, § 4(b),[2] petitioners filed an application for a writ of certiorari, or review, with the Supreme Court of Louisiana. The Supreme Court of Louisiana denied petitioners' application on February 22, 1991. 575 So.2d 390; Appendix 15a, *infra.*

Petitioners now invoke the jurisdiction of this Court pursuant to 28 U.S.C. § 1257(a), by filing this petition within the 90-day time period provided by 28 U.S.C. § 2101(c) and Sup. Ct. R. 13.1.

CONSTITUTIONAL PROVISIONS AND STATUTES INVOLVED

U.S. Const. art. I, § 8, cl. 3 provides:

> The Congress shall have Power . . . To regulate Commerce with foreign Nations, and among the several States, and with the Indian Tribes . . .

U.S. Const. art. III, § 2, cl. 1 provides:

> The judicial Power shall extend to all Cases, in Law and Equity, arising under this Constitution, the Laws of the United States, and Treaties made, or

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[1] Under Louisiana law, the liability judgment of the Court of Appeal is final and subject to no further appellate review. La. Code Civ. P. art. 1841 provides in pertinent part: "A judgment that determines the merits in whole or in part is a final judgment." La. Code Civ. P. art. 2166(D) further provides, in pertinent part: "If the application for certiorari to the [Louisiana] supreme court is timely filed, a judgment of the court of appeal becomes final and definitive when the [Louisiana] supreme court denies the application for certiorari."

[2] La. Sup. Ct. R. X, § 4(b) provides in pertinent part: "The application [for writ of certiorari, or review] shall be made within thirty days of the mailing of the notice of the original judgment of the court of appeal . . ."

> which shall be made, under their Authority; —to all Cases affecting Ambassadors, other public Ministers and Consuls; —to all Cases of admiralty and maritime jurisdictions; —to Controversies to which the United States shall be a Party; —to Controversies between two or more States; —between a State and Citizens of another State; —between Citizens of different States; —between Citizens of the same State claiming Lands under the Grants of different States, and between a State, or the Citizens thereof, and foreign States, Citizens or Subjects.

U.S. Const. art. VI, cl. 2 provides:

> This Constitution, and the Laws of the United States which shall be made in Pursuance thereof; and all Treaties made, or which shall be made, under the Authority of the United States, shall be the supreme Law of the Land; and the Judges in every State shall be bound thereby, any Thing in the Constitution or Laws of any State to the Contrary notwithstanding.

28 U.S.C. § 1333 provides:

> The district courts shall have original jurisdiction, exclusive of the courts of the States, of:
>
> (1) Any civil case of admiralty or maritime jurisdiction, saving to suitors in all cases all other remedies to which they are otherwise entitled.
>
> (2) Any prize brought into the United States and all proceedings for the condemnation of property taken as prize.

La. Const. (1974), Art. V, § 5(C) provides in pertinent part:

> (C) Scope of Review. Except as otherwise provided by this constitution, the jurisdiction of the supreme court in civil cases extends to both facts and law.

La. Const. (1974), Art. V, § 10(B) provides in pertinent part:

(B) Scope of Review. Except as limited to questions of law by this constitution, or as provided by law in the review of administrative agency determinations, appellate jurisdiction of a court of appeal extends to law and facts.

STATEMENT OF THE CASE

A. Preface

In recent years, increasing numbers of federal maritime cases have been filed in state courts. Plaintiffs' attorneys often file their clients' actions in state courts to avoid the application of federal doctrines and standards that they perceive as unfavorable. *See, e.g.*, Robertson and Speck, *Access to State Courts in Transnational Personal Injury Cases: Forum Non Conveniens and Anti-Suit Injunctions*, 68 Tex.L.Rev. 937, 940 (1990) (noting the increasing transnational personal injury litigation being brought in the state courts and that "knowledgeable plaintiffs' lawyers are looking to state courts to vindicate their transnational clients' rights"); Duplantier, *Louisiana: A Forum, Conveniens Vel Non*, 48 La.L.Rev. 761, 786-87 (1988) (noting that Louisiana is a "welcome center" for maritime and transnational litigation); Due, *The Status of Admiralty Forum Non Conveniens in State Court Personal Injury and Wrongful Death Litigation*, 2 Mar.L.Rev. 7, 7, 11 (1987) (noting that plaintiffs are filing their maritime claims in state court to avoid the maritime *forum non conveniens* doctrine and federal Anti-Injunction Act problems).

In Louisiana state court, where large numbers of these cases are being filed, state practices are often applied that materially affect the substantive rights of the parties. Despite being admonished by the federal courts (*see Ikospentakis v. Thalassic S.S. Agency*, 915 F.2d 176 (5th Cir. 1990)), the Louisiana Supreme Court has insisted that Louisiana is not bound by maritime doctrines that affect substantive rights, such as the maritime doctrine of

forum non conveniens (*see Markzannes v. Bermuda Star Line, Inc.*, 545 So.2d 537 (La. 1989), *cert. denied*, —— U.S. ——, 110 S.Ct. 837, 107 L.Ed.2d 832 (1990)) and federal principles of appellate review (*see Daigle v. Coastal Marine, Inc.*, 488 So.2d 679 (La. 1986)).

In this case, a Louisiana appellate court ignored a well-established maritime standard of care and employed state principles of appellate review to reverse a jury verdict that comported with the evidence and maritime law and that clearly could not have been reversed under established federal standards.

As discussed below, federal maritime law is the supreme law of the land that must be uniformly applied by both state and federal courts adjudicating maritime claims. Maritime law preempts state law, and the state courts are not free to alter the rights of maritime litigants. Parties bringing maritime claims should not be allowed to circumvent established maritime law by filing their claims in state court.[3] The decision below implicates important questions regarding the supremacy and uniformity of federal maritime law. The increasing number of admiralty and maritime cases being filed in the state courts and the resulting implications on international maritime commerce render these questions of significance far beyond the context of this litigation. Petitioners submit that this Court should grant a writ to consider these important questions.

B. The Underlying Facts

On October 20, 1987, the M/T SEABRAVERY, a Maltese-flagged, oceangoing tanker vessel purchased by

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[3] Due, *supra*, brazenly notes, "If the state court system refuses to accept such pre-emption and uniformity arguments . . . it is questionable whether the defendants will be able to get the United States Supreme Court to grant certiorari." *Id.*, 2 Mar.L.Rev. at 11. He concludes, "State court . . . still remains the possible only safe haven for certain foreign maritime personal injury and wrongful death claims."

petitioner Coronation shortly before the incident in question, suddenly and unexpectedly lost its steering while proceeding down the Mississippi River near New Orleans.[4] The vessel's unanticipated steering loss resulted when a concealed, internal fitting on a steering system hydraulic line separated internally. The resulting loss of hydraulic pressure rendered the vessel's steering inoperative.

At the time, respondent Creppel was employed cleaning barges moored near the river bank. Creppel, believing that the vessel would collide with the barges where he was working, injured himself when he jumped down to the deck of another barge. The M/T SEABRAVERY subsequently collided with a downriver barge fleet, not with the fleet where plaintiff was working.

C. An Overview of the Vessel's Steering System and the Cause of the Steering Failure

The M/T SEABRAVERY, like most other oceangoing vessels, is equipped with an electrohydraulic steering system. That is, electric signals sent by the steering wheel on the vessel's bridge activate hydraulic valves. The valves, in turn, direct hydraulic fluid under pressure to move the ship's rudder. Three gauges are connected to the pressure lines to monitor the steering system's pressure. Any major breach of this pressurized hydraulic system, such as a broken line, results in a loss of steering pressure to the rudder, and consequently the loss of the vessel's steering. The M/T SEABRAVERY lost its steering when the tubing connecting a pressure gauge unexpectedly pulled free from its internal fitting.

D. The Conflicting Evidence on the Question of Negligence

Respondent argued to the jury and to the state appellate courts that petitioners were negligent in the following

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[4] Petitioner, The United Kingdom Mutual Steam Ship Assurance Association (Bermuda) Limited, was the protection and indemnity ("P&I") insurer of the M/T SEABRAVERY.

respects: (1) in allowing copper tubing, rather than stainless steel tubing, to connect the pressure gauges to the steering hydraulic lines; (2) in failing to completely disassemble and inspect the internal fitting that failed; (3) in keeping open a pressure gauge "isolation valve" while the vessel was navigating in the Mississippi River; and (4) in operating a vessel with inadequate and inadequately installed alarms on the steering system. The jury heard substantial conflicting evidence on respondent's claims and concluded that petitioners were not negligent.

1. *The Copper Tubing*

The vessel's steering gear, as originally built, contained stainless steel hydraulic lines. However, sometime before the vessel was sold to Coronation, the pressure gauges were connected to the hydraulic lines using copper tubing and a copper fitting.

Respondent's expert, Mr. Cole, testified that the vessel's steering gear manual "required" the use of stainless steel tubing, rather than copper tubing, to connect the gauges to the hydraulic lines. He opined that the use of copper rendered the vessel negligent. However, substantial testimony and physical evidence, including the steering gear manual, contravened this testimony.

The steering gear manual (pertinent portions quoted in the Court of Appeal's decision, *see* Appendix at 11a-12a, *infra*) did not prohibit the use of copper tubing to connect the pressure gauge. It merely indicated that stainless steel tubing was used when the ship was built. It contained no prohibition against using copper tubing or fittings when making repairs.

Petitioner's expert, Mr. Haveman, testified that using copper tubing was acceptable. He testified that the M/T SEABRAVERY was entered in the Lloyd's Register of Shipping, an international, non-profit, maritime organization that sets the rules and standards for ship repair and construction and that inspects and classifies vessels for

nations worldwide. Haveman testified that Lloyd's rules authorize *either copper or steel*; he knew of nothing that prohibited the use of copper for the connection in question. Haveman further stated that the ship's manual did not require that repairs be made with steel. He testified that the Lloyd's surveyor had inspected the vessel on August 1, 1987, and issued the vessel certificates approving its condition, including the copper tubing.

Two engineering officers that had served aboard the M/T SEABRAVERY, a former Chief Engineer and the Second Engineer at the time of the casualty, also testified that copper was an appropriate repair material. Both testified that they had seen copper tubing used on other vessels.

2. *Inspection of the Fitting*

Respondent contended, and his expert testified, that the vessel was negligent in not completely disassembling and inspecting the internal fitting that failed before the accident. However, substantial evidence rebutted this testimony. Expert Haveman and the Chief Engineer both testified that unless a hydraulic fitting is leaking, or there is some visible sign of something wrong, disassembly of connections for purpose of inspections is unwise and is not required. The Chief Engineer and the Second Engineer testified that the steering system, including the connections, is inspected frequently—as often as hourly when the system is in use—and that no signs of leakage were observed before the casualty. The steering system was inspected and tested shortly before the casualty and all was in order. Expert Haveman testified that he had examined the lines after the casualty and found nothing that indicated the lines would fail. Furthermore, because copper was an acceptable repair material and did not violate any safety standards, the mere existence of the copper tubing gave rise to no extraordinary duty of inspection by disassembly.

3. *The Isolation Valve*

The hydraulic tubing leading to each pressure gauge contained an "isolation valve" to activate and deactivate the gauges. When a gauge's valve is closed, no fluid flows through the line to the gauge and the gauge is inoperable. When a gauge's valve is open, fluid would flow to the gauge. If the valve for the gauge in question had been closed, no fluid would have flowed through the fitting that failed, and the casualty would not have occurred. Thus, respondent contended, and his expert testified, that leaving the valve open was negligent, and that the valve should be closed, except when the crew was taking pressure readings. Respondent pointed to a recommendation in the steering gear manual that the valve be kept closed except when readings were being taken. Again, substantial testimony and evidence rebutted the testimony of respondent's expert.

The Chief Engineer, the Second Engineer, and Expert Haveman all testified that prudent seamanship practices require that the valve be kept open while the vessel is navigating in confined waters, such as the Mississippi River. They explained that when the vessel is maneuvering on a river, and the rudder is being maneuvered often, the gauges must be kept open so that the crew can quickly observe the steering pressure and the working of the equipment. They further testified, consistent with the plain language of the steering gear manual, that the purpose for the manual's recommendation to keep the valve closed was to protect the accuracy of the gauges, not to protect against a steering failure. Expert Haveman testified that he knew of no rule or regulation that required the isolation valve to be closed. The Coast Guard found no negligence on the part of the vessel in keeping the valve open. An endorsement on the Coast Guard report confirmed that the purpose of the manual's recommendation to keep the valve closed was to protect the gauges, not to prevent a steering failure.

4. *The Alleged Inadequate Alarms*

Respondent, supported by the testimony of his expert, alleged that the steering alarms on the vessel were useless and in violation of applicable regulations. However, substantial evidence demonstrated that the vessel's alarms complied with and sounded as required by all applicable international maritime regulations. International regulations required the vessel to have a low fluid level alarm on the bridge and in the engine room; the M/T SEA-BRAVERY had these alarms. In addition to the low fluid level alarm, the vessel was equipped with a steering pressure alarm that sounded when the hydraulic system lost pressure.

Furthermore, substantial evidence demonstrated that the ship's alarms functioned properly. While the vessel's river pilot could not recall hearing any alarm sounding on the bridge, other witnesses testified that the alarms worked as designed. The Second Engineer testified that the low pressure alarm sounded about one minute before impact, *i.e.*, at the time the vessel lost its steering.[5] The low fluid level alarm sounded about the time of the impact, *i.e.*, about one minute later when sufficient fluid had drained from the fluid reservoir to trigger the alarm.[6] The Second Engineer further testified that the low fluid level alarm was still sounding when he went to the bridge immediately after impact. The Chief Engineer testified that the Lloyd's inspector tested the low fluid level alarm

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[5] The vessel's river pilot testified that he realized that the vessel lost its steering about one minute before impact.

[6] Unlike the low *pressure* alarm, which is designed to sound immediately upon a loss of steering pressure, the low *fluid level* alarm is not designed to sound, and is not required by international marine regulations to sound, until the fluid level in the system's reservoir is low. Thus, where a breach in the system causes a loss of pressure in the steering hydraulic system, as happened here, the pressure alarm will sound first. Subsequently, when the breach in the hydraulic system causes sufficient fluid to drain from the fluid tank, the low fluid level alarm is triggered.

shortly before the collision and found that it worked as designed.

Finally, substantial evidence demonstrated that the alarms, whether they sounded or not, could not have prevented the casualty. The vessel's river pilot testified that he knew of the steering failure about one minute before impact—about the same time that the Second Engineer heard the low pressure alarm sound. Thus, whether or not the alarm sounded, the pilot was aware of the steering failure immediately. Furthermore, the ship's river pilot also testified that once a large vessel, such as the M/T SEABRAVERY, loses its steering in a confined waterway such as the Mississippi River, a collision is imminent and virtually unavoidable because of the substantial time needed to counter the vessel's momentum that resulted from the steering loss.

E. The Jury Evaluates the Evidence and the State Appellate Courts Reverse

On October 4, 1989, after trying the case for over a week, the jury exonerated petitioners of all negligence. Appendix, 16a-19a, *infra*. The trial court entered judgment in accordance with the jury verdict. Appendix, 20a, *infra*. The trial court also denied respondent's motions for a judgment notwithstanding the verdict, or alternatively, for a new trial. Appendix, 23a, *infra*.

On December 12, 1990, the Court of Appeal, Fifth Circuit, State of Louisiana, applying Louisiana principles of appellate review, reversed the jury's verdict. The court spent seven of its fourteen legal page decision discussing the conflicting trial testimony and evidence. 572 So.2d 1051; Appendix, 5a-12a, *infra*. While the appellate court *conceded* that the evidence regarding the vessel's negligence conflicted, it concluded that the jury's verdict was not supported by the evidence. The Court of Appeal then reweighted the evidence and entered judgment for respondents. Appendix, 13a-14a, *infra*. Although no

one challenged the trial court's jury instructions regarding the maritime standard of care,[7] the Court of Appeal *sua sponte* substituted a stricter standard of care. Appendix, 13a-14a, *infra*.

Petitioners then sought review before the Supreme Court of Louisiana challenging, *inter alia*, the authority of the Court of Appeal to redefine the established maritime standard of care and to review the case under state, rather than federal, principles of review. On February 22, 1991, the Supreme Court of Louisiana denied petitioners' application for review, with one judge dissenting and one judge abstaining. 575 So.2d 390; Appendix, 15a, *infra*.

REASONS FOR GRANTING THE WRIT

I. THE LOUISIANA COURT OF APPEAL VIOLATED THE CONSTITUTIONAL UNIFORMITY DOCTRINE AND THE CONSTITUTIONAL SUPREMACY OF FEDERAL MARITIME LAW BY ALTERING THE ESTABLISHED MARITIME NEGLIGENCE STANDARD OF CARE

This Court continually has held that federal admiralty and maritime law is constitutionally supreme and must be applied uniformly by all courts—state and federal—adjudicating maritime claims. *E.g., Offshore Logistics, Inc. v. Tallentire*, 477 U.S. 207, 223 (1986); *Kermarec v. Compagnie Generale Transatlantique*, 358 U.S. 625, 628 (1959); *Pope & Talbot, Inc. v. Hawn*, 346 U.S. 406, 409-11 (1953); *Garrett v. Moore-McCormack Co.*, 317 U.S. 239, 244-46 (1942); *Panama Railroad Co. v. Johnson*, 264 U.S. 375, 386 (1924); *Knickerbocker Ice Co. v. Stewart*, 253 U.S. 149, 157-60 (1920). "While states may sometimes supplement federal maritime policies, a

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[7] As required by this Court's decision in *Kermarec v. Compagnie Generale Transatlantique*, 358 U.S. 625 (1959), the trial court correctly charged the jury that petitioners' duty was one of "reasonable care under the circumstances."

state may not deprive a person of any substantial admiralty rights as defined in controlling acts of Congress or by interpretative decisions of this Court." *Hawn*, 346 U.S. at 409-410. The substantial rights of the parties must not depend "on which courthouse, or even on which 'side' of the same courthouse, a lawyer might guess to be in the best interests of his client." *Id.*, at 411.

In *Kermarec*, *supra*, this Court established that the standard of care that a maritime defendant owes to a maritime plaintiff is a matter of substantive maritime law. *Id.*, 358 U.S. at 628. The Court held that maritime law, not New York law, governed the standard of care owed by a maritime defendant. *Id.* There, the trial court granted a motion for judgment notwithstanding the verdict, overturning a jury verdict on the grounds that the verdict was not supportable under the law of New York. *Id.*, at 627-28. The court of appeals affirmed. *Id.*, at 628. This Court reversed and ordered that the jury verdict be reinstated because maritime law—not New York law—applied to the case, and because the jury's verdict was sustainable under the maritime law. *Id.*, at 628-32. This Court held that the standard of care owed to non-crewmembers was one of reasonable care under the circumstances. *Id.*, at 630. *See also Robins Dry Dock & Repair Co. v. Dahl*, 266 U.S. 449 (1925) (holding that federal maritime law preempted state law regarding the rights and liabilities of the parties in a maritime tort action).

The Louisiana Court of Appeal in this case, like the courts in *Kermarec*, impermissibly altered this established standard of care. The trial court, following *Kermarec*, correctly charged the jury that the standard of care owed by a vessel owner is one of "reasonable care under the circumstances." Respondent made no trial objection or appellate argument regarding this charge, and the jury exonerated petitioners under this established maritime standard of care. Nonetheless, the Court of Appeal, *citing*

no maritime law, essentially held petitioners strictly liable for purportedly failing to operate a safe ship. The Court of Appeal, ignoring *Kermarec* and citing no authority whatever, concocted a vague and undefined "duty to operate a safe vessel" as its basis for reevaluating the evidence and holding petitioners absolutely liable. Appendix, 13a-14a, *infra*. The Court of Appeal violated its constitutional obligation, imposed by the uniformity doctrine and the supremacy of federal maritime law, to apply—and not to alter—established federal maritime law.

The Court of Appeal's refusal to apply established maritime law has international implications far beyond this case. As the U.S. Fifth Circuit recently recognized in discussing *Asahi Metal Industry Co. v. Superior Court of California, Solano City*, 480 U.S. 102, 114-16 (1987), "[f]ederal foreign policy interests do not disappear when purely private foreign parties come before U.S. courts." *Exxon Corp. v. Chick Kam Choo*, 817 F.2d 307, 321 (5th Cir. 1987), *reversed in part on other grounds*, 486 U.S. 140 (1988). The fact that maritime commerce, by definition, is international, dictates the need for a uniform federal maritime law by which all courts, state and federal, are bound. Although addressing jurisdiction and choice of law, the following comment from *Lauritzen v. Larsen*, 345 U.S. 571, 581 (1953), stresses the need for uniformity in the federal maritime law:

> [T]he virtue and utility of sea-borne commerce lies in its frequent and important contacts with more than one country. If, to serve some immediate interest, the courts of each were to exploit every such contact to the limit of its power, it is not difficult to see that a multiplicity of conflicting and overlapping burdens would blight international carriage by sea.

The opinion of the Court of Appeal destroys that uniformity. Published and indexed in the national reporter system, it stands for the proposition that *Kermarec* and

the federal maritime law need not be followed. Under the Court of Appeal's decision, the states are free to ignore the maritime duties established by this Court and to impose arbitrary duties on a case-by-case basis.

Furthermore, the decision of the Court of Appeal subordinated uniform standards of care established by international maritime regulations and customs to those that it established. The court below essentially found that international safety regulations, equipment requirements, and customs were overridden by the state court's vague, self-imposed, strict "duty to operate a safe vessel." Appendix, 13a-14a, *infra*. The Court of Appeal's decision, if allowed to stand, will authorize courts adjudicating maritime cases to freely violate these established, international precepts by which the international maritime community is bound. Rather than being bound by a supreme, uniform maritime law, international commerce will be subject to a myriad of local regulations and duties, each establishing a separate standard of care.

Petitioners submit that the decision of the Court of Appeal seriously undermines the supremacy and uniformity of federal maritime law by supplanting established federal standards of care with arbitrarily imposed state standards. Petitioners submit that this Court should issue a writ to consider this important issue.

II. THE LOUISIANA COURT OF APPEAL VIOLATED THE CONSTITUTIONAL UNIFORMITY DOCTRINE AND THE CONSTITUTIONAL SUPREMACY OF FEDERAL MARITIME LAW BY UTILIZING STATE PRINCIPLES OF APPELLATE REVIEW

The constitutionally required uniformity of federal maritime law not only requires state courts hearing maritime cases to apply substantive maritime law, but also other rules that materially affect substantive maritime rights. Maritime tort actions are "a type of action

which the Constitution had placed under national power to control in 'its substantive *as well as its procedural* features.'" *Hawn*, 346 U.S. at 409, *quoting Johnson*, 264 U.S. at 386 (emphasis supplied).

This Court has refused to allow the state courts to apply state procedures that interfere with the substantive rights of maritime litigants. In *Hawn*, the Court held that the Pennsylvania procedural contributory negligence rule could not be applied in a maritime personal injury action. *Id.*, 346 U.S. at 408-412. "[T]he substantial rights of the parties [should not] depend on which courthouse, or even on which 'side' of the same courthouse, a lawyer might guess to be in the best interests of his client." *Id.*, 346 U.S. at 411.

Similarly, in *Garrett*, the Court held that federal maritime principles, and not Pennsylvania procedure, provided a seaman's burden of proof in determining the validity of a release that the seaman had signed. *Id.*, 317 U.S. at 243-46. This Court stressed that the state court must employ procedures that protect the substantive rights of the parties under the controlling federal maritime law. *Id.*

In furtherance of these fundamental principles announced in *Hawn* and *Garrett*, other courts have held that other so-called "procedural" concepts that materially affect the substantive rights of maritime litigants form an integral part of the maritime law that must be applied in maritime cases by both state and federal courts. *Butler v. American Trawler Co., Inc.*, 887 F.2d 20, 21 (1st Cir. 1989) (holding that a maritime statute of limitations preempted a state statute of limitations); *Carey v. Bahama Cruise Lines*, 864 F.2d 201, 207 (1st. Cir. 1988) (holding that maritime comparative negligence principles preempted Massachusetts comparative negligence principles); *Chick Kam Choo*, *supra*, 817 F.2d at 316-25 (holding that the uniformity doctrine and the supremacy of federal maritime law require state courts

to apply the maritime doctrine of *forum non conveniens*); *Ikospentakis, supra*, 915 F.2d 176 (5th Cir. 1990) (finding that Louisiana's refusal to apply the maritime doctrine of *forum non conveniens* violates the supremacy and uniformity of federal maritime law); *Intagliata v. Shipowners & Merchants Towboat Co., Ltd.*, 26 Cal.2d 365, 159 P.2d 1 (1945) (holding that the former maritime division of damages rule preempted state law); *Fort v. Lewis*, 649 S.W.2d 204 (Ky. Ct. App. 1983) (finding that "both substantive and procedural features of maritime law control" in a maritime action filed in state court); *Celeste v. Prudential-Grace Lines, Inc.*, 35 N.Y.2d 60, 358 N.Y.S.2d 729, 315 N.E.2d 782 (N.Y. Ct. App. 1974) (holding that the federal maritime doctrine of laches preempted the state statute of limitations.)

This case demonstrates the disparity of result and the lack of uniformity that ensue when state courts apply their own principles of appellate review to a maritime case. Findings of fact in maritime cases tried by the court without a jury are subject to review under the "clearly erroneous" rule. *McAllister v. United States*, 348 U.S. 19, 20 (1954). Where a maritime case is tried to a jury, reviewing courts apply an even stricter standard. *E.g., Rios v. Empresas Lineas Maritimas Argentinas*, 575 F.2d 986, 990 (1st Cir. 1978) (the jury should be overruled, and a judgment n.o.v. should be granted only when no conclusion but one could be drawn from the evidence); *Treadaway v. Societe Anonyme Louis-Dreyfus*, 894 F.2d 161, 164 (5th Cir. 1990) (grant of a judgment n.o.v. and reversal of a jury verdict is inappropriate "unless consideration of all of the evidence and inferences favorable to the nonmoving party convinces the Court that no reasonable jury could arrive at a contrary verdict."); *Scheib v. Williams-McWilliams Co., Inc.*, 628 F.2d 509, 512 (5th Cir. 1980) (where no directed verdict is made at the close of evidence, the jury's verdict cannot be reversed, absent "plain error,"

where there was *any* evidence, regardless of its sufficiency, supporting the verdict).

Thus, under the standards normally applied to maritime cases, whether under the "clearly erroneous" rule or under the stricter jury review standards, the verdict of a jury supported by substantial evidence cannot be reversed. Where the evidence conflicts and the trier of fact could decide the case for either party, the appellate court is not free to substitute its own findings for those of the trial court. *McAllister, supra.* Furthermore, even where there is an error requiring a reversal, the appellate court is not free to reweigh the evidence and enter judgment; it must remand the case to the trial court for a new trial. *Pullman-Standard v. Swint*, 456 U.S. 273, 291-92 (1982); *Berg v. Chevron U.S.A., Inc.*, 759 F.2d 1425, 1431 (9th Cir. 1985); *Keefe v. Bahama Cruise Line, Inc.*, 867 F.2d 1318, 1323 (11th Cir. 1989); *Hayes-Leger Associates, Inc. v. M/V ORIENTAL KNIGHT*, 765 F.2d 1076, 1081 and n.10 (11th Cir. 1985).

The Louisiana principles of review applied in this case differ substantially and materially. Several Louisiana intermediate appellate courts had held that the federal "clearly erroneous" rule, and not state principles of review, should be applied to Jones Act maritime cases filed in state court. *E.g., Robertson v. Geophysical Service, Inc.*, 469 So.2d 22, 24 (La. App. 1st Cir. 1985); *Rivers v. Schlumberger Well Surveying Corp.*, 389 So.2d 807, 810-11 (La. App. 3d Cir. 1980); *Ferdinandtsen v. Delta Marine Drilling Co.*, 235 So.2d 641, 644-45 (La. App. 4th Cir. 1970); *Sutton v. Central Gulf Lines, Inc.*, 433 So.2d 888, 891 (La. App. 5th Cir. 1983). However, in 1986, the Louisiana Supreme Court, in *Daigle v. Coastal Marine, Inc.*, 488 So.2d 679 (La. 1986), refused to apply federal standards of review to a maritime personal injury claim brought in state court by a boat passenger who had injured himself on a vessel stairway. The Louisiana Supreme Court, contrary to the previous

rulings by the state intermediate courts of appeal, held that "the procedural law of Louisiana controls as to the scope of appellate review." *Daigle*, 488 So.2d at 682.[8]

Under the Louisiana law applied in *Daigle* and in this case, the appellate courts have the authority to review the law *and the facts*. La. Const. 1974, Art. V, §§ 5, 10; *Daigle*, 488 So.2d at 682; *Gonzales v. Xerox Corp.*, 320 So.2d 163, 165 and n.1 (La. 1975). The Louisiana appellate courts are required to reweigh the evidence and redecide the case where the appellate court finds a basis, legal or factual, for undermining the jury verdict or trial court judgment. *Daigle, supra; Gonzales, supra.* In theory, the jury verdict or trial court fact findings are entitled to substantial deference and should not be reversed absent "manifest error." *Rosell v. Esco*, 549 So.2d 840, 844 (La. 1989). However, in practice, as the Court of Appeal's decision in this case demonstrates, a Louisiana appellate court that disagrees with the judgment below is free to reweigh the evidence on appeal by simply finding a legal error, or by simply disagreeing with the trial court's resolution of the facts.[9]

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[8] *Daigle*, a case involving a personal injury of a passenger on a vessel in navigation, clearly involved a maritime claim subject to federal maritime substantive law. *See Kermarec, supra.* Nonetheless, the Supreme Court of Louisiana, in addition to holding that state principles of review applied to that case, also held that Louisiana substantive law governed. *Daigle*, 488 So.2d at 682.

[9] Respondent will no doubt argue, as he argued to the Louisiana Supreme Court, that petitioners waived this argument by consenting to a state standard of review before the Court of Appeal. Respondent's contention is specious. The Louisiana Supreme Court had ruled in *Daigle, supra*, that state principles of appellate review, and not federal principles, applied in a maritime case. The Court of Appeal was bound by *Daigle* and was powerless to apply any standard of appellate review except the state standard. As only the Louisiana Supreme Court could reverse *Daigle*, petitioners correctly raised this issue in their writ application to that Court.

Furthermore, the issue below, *raised by respondent* as appellant before the Court of Appeal, was sufficiency of the evidence. Petitioners, as appellees below, were arguing for preservation of the

In *Hawn*, this Court held that the substantive rights of maritime litigants should not depend on where a lawsuit is filed. 346 U.S. at 411. The uniformity doctrine and the constitutional supremacy of the maritime law require that the party's rights be the same, regardless of the forum. *Id.; Garrett, supra.* The application of Louisiana principles of review to this maritime case vividly demonstrates the lack of uniformity and the substantial impact on maritime substantive rights that result when state principles of review are applied to a maritime case.

The conflicting evidence in this case is discussed above, as well as in the decision of the Court of Appeal. *See* Appendix, 5a-12a, *infra.* Had this case been reviewed under principles of appellate review, whether under the "clearly erroneous" rule or under the stricter jury verdict review standards, the substantial conflicting evidence would have mandated that the jury's verdict be affirmed.

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jury's verdict and had no obligation to preserve any error until the Court of Appeal applied the wrong standard and reversed the jury verdict. Petitioners timely challenged the Court of Appeal's error at the earliest opportunity—in its writ application to the Louisiana Supreme Court.

Finally, the courts have an independent obligation to apply the legally correct standard of review. *See Fox v. Commissioner of Internal Revenue*, 718 F.2d 251, 253 (7th Cir. 1983) (addressing the question of standard of review where the parties did not address the issue); *Shakman v. Democratic Organization of Cook County*, 722 F.2d 1307, 1309 (7th Cir. 1983) (applying the correct standard where one party argued an erroneous standard and the other party failed to discuss the issue); *American International Underwriters (Philippines), Inc. v. The Continental Ins. Co.*, 843 F.2d 1253, 1256 (9th Cir. 1988) (applying the correct standard of review where one of the parties argued an erroneous standard). This Court on several occasions, has applied the correct standard where the court below applied an improper standard. *See Amadeo v. Zant*, 486 U.S. 214, 223 (1988); *Goodyear Atomic Corp. v. Miller*, 486 U.S. 174, 180 n.1 (1988); *Anderson v. Bessemer City*, 470 U.S. 564, 566 (1985); *Consolo v. Federal Maritime Commission*, 383 U.S. 607, 618-19 (1966).

However, under state principles of review, the appellate court was free to reweigh the evidence, refind the facts *de novo*, and enter a judgment contrary to the jury verdict. The Louisiana Court of Appeal spent seven legal pages—*approximately half the text of its decision*—describing the conflicting evidence on the question of petitioners' asserted negligence. Appendix, 5a-12a. It then *admitted* that the evidence conflicted, *id.* 12a, before disagreeing with the jury's verdict, retrying the case on appeal, and entering judgment for respondent.

This case demonstrates that applying state principles of appellate review materially alters the substantive rights of the parties and destroys the uniformity of decision in the maritime law that the Constitution requires. Petitioners submit that this Court should grant a writ to consider whether the supremacy of federal maritime law and the uniformity doctrine require that all maritime cases be reviewed under uniform federal principles of review.

CONCLUSION

This case involves important questions of international concern regarding the constitutionally required supremacy and uniformity of federal maritime law. For the reasons set forth above, petitioners submit that the Court should grant a writ of certiorari.

Respectfully submitted,

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May 17, 1991

APPENDICES

APPENDICES

APPENDIX A

COURT OF APPEAL
FIFTH CIRCUIT
STATE OF LOUISIANA

No. 90-CA-425

GLENN J. CREPPEL, JR.

versus

CORONATION SHIPPING CO.,
THENAMARIS MANAGEMENT, INC.
and TERRANCE DOYLE

Appeal from the Twenty-Fourth Judicial District Court
for the Parish of Jefferson, State of Louisiana,
Division "C", No. 359-213,
Honorable Joseph F. Grefer, Judge

LAWRENCE A. CHEHARDY
Chief Judge

[Dec. 12, 1990]

(Court composed of Judges Lawrence A. Chehardy, H. Charles Gaudin, and Charles Grisbaum, Jr.)

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REVERSED AND REMANDED

Plaintiff, Glenn J. Creppel, Jr., appeals a judgment dismissing his personal injury suit against defendants Coronation Shipping Company, Ltd. (Coronation), and its insurer, United Kingdom Steam Ship Assurance Association (Bermuda), Ltd. (United Kingdom). The case arose from a ship collision on the Mississippi River near Harahan, Louisiana.

On appeal, plaintiff first contends the trial judge erred in failing to instruct the jury on the maritime presumption of negligence, which is applied to collisions involving drifting vessels. Plaintiff also asserts the jury was clearly wrong in failing to find defendant Coronation negligent. We agree with the latter contention and reverse the judgment.

The facts show on the day of the accident plaintiff was engaged in his employment with T. T. Barge Cleaning Facility stripping chemicals from a barge at the company's plant on the east bank of the Mississippi River.

Suddenly, plaintiff's fellow workers raised an alarm, yelling to him to run for his life because a drifting ship was about to collide with the barges. Plaintiff and his coworkers ran in the same direction away from the potential area of impact, impelled by the fear of explosion, due to the volatile nature of the chemicals in and on the barges. During the flight, plaintiff had to jump down approximately 10 feet to another barge. As he landed, he injured his right foot.

As it turned out, the drifting tanker collided with a fleet of barges next to the one plaintiff had been working on and no explosion occurred. However, the ship sliced in half and sank two barges, and "piled up" the other barges. The entire incident took place in less than a minute.

Following the accident, it was determined the ship's steering failed, causing it to drift and collide with the barges. In turn, the steering failure was caused when a fitting broke. The fitting secured a copper metering line to the starboard hydraulic pressure gauge. As a result, the hydraulic fluid reservoir emptied and the vessel was bereft of steering ability.

Plaintiff subsequently filed an action for negligence pursuant to general maritime law and the law of admiralty against Coronation, United Kingdom, Thenamaris Ship Management, Inc., and the river pilot on the M/T SEABRAVERY at the time of the collision, Terrance Doyle. (Thenamaris Ship Management, Inc., was eventually dismissed on joint motion of the parties.)

Commercial Union Insurance Company intervened to recover compensation benefits and medical payments made to and on behalf of plaintiff under the Longshore and Harborworker's Compensation Act.

The case was tried before a jury on September 26-29, 1989, and October 2-4, 1989. At the close of plaintiff's case, the trial judge granted Terrance Doyle's motion for

involuntary dismissal. Following the trial, the jury returned a verdict finding that the plaintiff sustained an injury in the collision, but also that Coronation was not negligent. Judgment was thereafter rendered on October 5, 1989, dismissing plaintiff's action.

The first issue we are presented with involves the trial judge's refusal to instruct the jury with certain jury charges submitted by plaintiff. The charges relate to the legal presumption of negligence applied by the courts in certain types of maritime collision cases, otherwise known as *allision* in the vernacular of maritime law.

LSA-C.C.P. art. 1793 provides that a party may not assign as error the giving or failure to give a jury instruction unless he has made a specific objection and unless he has stated the grounds for the objection. A blanket objection does not suffice, but must be accompanied by a statement of the grounds of the objection, otherwise it is waived. *Bechtel v. Entringer Bakeries, Inc.*, 422 So.2d 1299 (La. App. 5 Cir. 1982); *see also, Bienvenu v. State Farm Auto. Ins.*, 545 So.2d 581 (La. App. 5 Cir. 1989).

In this case, plaintiff objected to the trial judge's refusal to charge the jury with his requested charges numbered 13-16. Three of those involved the maritime presumption of negligence referred to herein. Plaintiff did not, however, state the grounds for the objections. As a result, the objections were not preserved for appeal and he cannot now assert error in this regard.

Plaintiff next contends the jury committed manifest error in failing to find defendant shipowner negligent. He asserts Coronation negligently failed to follow the manufacturer's steering gear manual by permitting a soldered copper ferrule fitting and copper tubing to be used to connect the starboard steering gauge instead of seamless steel, and in failing to properly inspect this compromise to the system. He also contends the ship-

owner was negligent in operating the vessel with an open isolation valve in violation of the steering manual instructions, and in allowing an inadequate or defective alarm system to exist in the system.

Defendants rebut these allegations, first, by asserting the evidence shows the use of copper was and is common in these types of steering systems. Defendants refer to the manual and claim it does not require the use of seamless steel, although the latter is the material originally placed in the system.

Defendants next point out the testimony indicates the isolation valve is customarily left open while navigating in closed waterways. They assert the manual recommends the valve be kept closed in order to protect the gauges, but there is nothing in the manual which requires the valve to be closed for reasons relating to the integrity of the steering system.

Third, defendants argue the low-level alarm system (which sounds when the hydraulic fluid is low) was neither inadequate nor defective. They point out the evidence shows the alarms on the ship were in accordance with international regulations. They were functioning properly and the crew took the available precautionary measures when the alarms sounded. In addition, defendants contend the alarms were irrelevant to the case because the steering failure occurred only a minute preceding impact and the bridge was aware of the failure before the alarms sounded.

In regard to the issue of Coronation's fault, plaintiff first presented the testimony of J.T. Doyle, the river pilot for the SEABRAVERY, on cross-examination. As a river pilot, Doyle navigates ships in the river between New Orleans and Baton Rouge.

Doyle stated that just before the accident the SEABRAVERY, carrying flammable and volatile jet fuel (naptha), was negotiating a turn in the river. He testi-

fied he gave the command "port 10" to bring the vessel around the bend, then asked for "mid-ship" to stop the turn and straighten the vessel's movement. Doyle said the ship responded properly to the port 10 maneuver, but the rudder failed to respond to the mid-ship command. Doyle stated he quickly asked for a "hard to starboard" position to bring the ship, which was continuing to drift toward land, back to the middle of the river. He again received no response. Doyle said he looked up at the rudder indicator, which remained on "port 10", and he knew there was a problem at that time. Consequently, Doyle told the captain and blew the danger signal.

Doyle stated he saw a push boat and barge carrying a red flag, indicating it contained flammable material, coming toward the ship and he was worried the SEABRAVERY was going to hit it, so he tried to radio a warning. Doyle also called Vessel Traffic Service. He testified the ship missed the oncoming barge, but pushed into a line of barges tied to the shore "like a hot knife going through butter".

Doyle stated that the incident lasted no more than one minute. He noted he was afraid of an explosion during the entire time due to the ship's cargo. He also stated he did not recall hearing the ship's steering alarm sound at any time prior to the impact.

Plaintiff next presented the expert testimony of a marine engineer, Ralston Cole. Cole inspected the ship in April 1989. He explained the steering failed because a line to one of the gauges pulled or was pushed loose from the fitting causing the hydraulic pumps to lose 150 liters of hydraulic fluid at once, resulting in an inability to move the ship's rudder. He pointed out the line which became disengaged was made of copper instead of steel as, he contended, was required by the steering manual. He further stated the fitting used was not designed for the system and that even if a copper line was allowed,

that fitting was not the correct type to connect a copper line. Cole also stated the size of the copper line was inappropriately small.

Cole next discussed the isolation valve. He explained the purpose of the valve is to isolate the gauge from the rest of the system. The closed valve prevents the fluid from flowing past into the gauge portion of the system. He admitted the manual recommends the valve be kept closed, except when reading the gauges in order to protect them, but asserted it also protects the integrity of the system and would also have prevented the fluid to escape in this case. He pointed out the valve was easily opened and closed and stated the stress of leaving the valve open would eventually cause the tubes (lines) to stretch, resulting in inadequate readings from the gauges.

Cole next discussed the alarms related to the steering system. He explained the ship had two alarm systems—one for loss of pressure and one for low level of fluid. He contended the low level alarm was set too low and he believed it failed to sound properly. Otherwise it would have sounded to alert the crew of the failure.

On cross-examination Cole noted the ship was built in 1972 and that he did not know how long the copper line had been in the ship. He stated copper could be sufficiently strong to perform in such a system, but claimed this one was half of the Lloyds Register of Shipping (Lloyds) equation for the pressure involved. (Lloyds he noted, is a British safety regulatory body which describes the manner in which a ship should be built and operated and which inspects ships for insurance purposes annually.) He admitted Lloyds does not prohibit the use of copper and that the Lloyds inspector passed the SEABRAVERY after the accident even though she was again fitted with copper lines in the steering system. He further testified there are no rules or regulations requiring the isolation valve to be closed all the time. He main-

tained his opinion, however, that leaving the valve open impaired the accuracy of the gauges.

Plaintiff also called Scott Hartley, the U.S. Coast Guard inspector who investigated the accident, to the stand. He, like Cole, interpreted the manual to require steel tubing and also believed the isolation valve should be kept closed to prevent fluctuation in the readings. He made no determination about the alarms but in his report stated the accident was caused by a "degree" of negligence on Coronation's part.

On cross-examination, Hartley was questioned about his report, wherein he stated he could not determine whether leaving the valve open was or was not customary among those traveling the Mississippi River, in anticipation of the testimony of defendants' witnesses that it was customary due to the difficulty of navigating the river. In addition, Hartley testified, per his report, that he found no facts indicating any other negligence on the part of Coronation, other than a "degree" of negligence related to their failure to follow the manual (as to the copper lines and open isolation valve).

Defendants presented the testimony of Nicholas Marinos, Evagelos Drakas, and Berend Haveman. Marinos was chief engineer on the SEABRAVERY prior to the accident from May 27, 1987 to August 9, 1987. Drakas was second engineer from January 7, 1987 to December 18, 1987, and was aboard during the collision. Haveman, a marine surveyor, testified as defendants' expert.

Marinos testified the steering system in the SEABRAVERY was the same when the accident occurred as when he came aboard. He contended the use of copper with seamless steel was not uncommon in the shipping industry and that he had seen brass used with steel, as well as copper. He noted he had served on similar or larger ships and never had an inspector or government official require all-steel. Marinos stated he read the

manual when he came on board the SEABRAVERY and agreed it was important to follow its instructions. However, he did not agree with plaintiff's witnesses that the manual required steel to be used in outfitting the system. He pointed out the manual does not specifically state that seamless steel must be used, but only refers to the fact steel was used originally.

In regard to the isolation valve, Marinos testified it was customary on all ships to keep the valve open while traveling closed waterways and, in particular, the Mississippi River, although it only took seconds to open the valve. He stated this was done on the engineer's orders so that the crew would have quick reference to the equipment's functioning because of the added stresses caused by maneuvering in the currents of the river.

Marinos stated everything was in working order when he arrived on the SEABRAVERY, including the low level alarm and pressure alarm. He said the steering equipment with the copper line would not have been disassembled unless a problem was visible, i.e. steam escaping or fluid leakage. Marinos testified the equipment received regular ordinary maintenance and that he was on board in August 1987 when Lloyds inspected and approved the ship in conjunction with Coronation's purchase of the SEABRAVERY at that time.

Drakas testified next for defendants and he supported Marinos' testimony. In addition, Drakas informed the court that he was responsible for the daily maintenance of the steering gear system. In this regard, he noted, he had not observed any unusually high pressures during operation of the system, nor had any problems been evident.

Drakas stated he tested the equipment before the ship left the dock on the day of the collision and it operated properly then and during the trip downriver. He stated

he stayed in the engine room throughout the trip and was there when the equipment failed.

Just prior to impact, Drakas said, the low-pressure alarm sounded in the control room. Drakas sent his third engineer to check the cause and in seconds received orders from the bridge designed to bring the ship away from shore. He testified despite all efforts, however, the ship hit something, throwing him to the floor. He stated the episode lasted no more than a minute, and noted the low-level alarm sounded either at or just after the collision. After the impact, Drakas stated he went to the bridge where the low-level alarm was still sounding.

Drakas testified the broken equipment was replaced with copper, which was inspected and approved by Lloyds and the U.S. Coast Guard. In answer to questioning on cross-examination, he stated (as had Marinos) that he would have changed the pipe fitting had he known it had been soldered, but he could not have made that determination without taking that portion of the system apart.

Defendants' final witness, Berend Haveman, a marine surveyor, explained that Lloyds is a non-profit international group which sets the rules as to how to build, maintain and repair safe vessels. The group, he stated, inspects ships on behalf of most governments. He noted the SEABRAVERY held the highest classification both before and after the collision.

Haveman, a one-time inspector for Lloyds, testified he had examined a number of steering gears similar to the SEABRAVERY's and he stated they were usually made of copper or steel, or copper nickle or stainless. He contended copper is a permitted material and that it is used in about one-third of all vessels. He further stated the size of the tube, contrary to Cole's testimony, is adequate for the pressure. He noted there was nothing visible in his examination of the system shortly after the

collision to indicate problems with the tube and/or the fitting.

In regard to the valve, Haveman stated he read the manual and interpreted the section relating to the isolation valve to mean it should be kept closed solely for the purpose of protecting the gauges. He contended it was better practice to leave the valve open while doing difficult maneuvering in the river so that the crew could discover early signs of malfunction.

Haveman stated he tested the low-level alarm the same evening following the accident when he went aboard the SEABRAVERY to inspect it on defendants' behalf. He testified it worked. He noted the alarm was designed to give reasonable notice that the oil level was low and needed to be replenished, but pointed out that if the system lost pressure, the low-level alarm would ring after the pressure alarm sounded.

In the general introduction section of the steering gear manual, Sub-section 3, it is stated:

> "The Steering Gear is designed to give long and consistent trouble free service, but this service is dependent on the proper operation, care and regular maintenance of the equipment. This Manual gives detailed instructions and information relevant to the carrying out of these procedures and the instructions should be carefully followed to ensure that this trouble free service is realised [sic] in practice."

The references to the material of the lines and the position of the isolation valve, at issue herein, provide as follows:

1. "SMALL BORE PIPING (FIG. 10).

   7.1) In addition to the main pressure piping, seamless steel pressure piping of smaller bore (hence the general term 'small bore

piping') is used in the following hydraulic lines:

Charge
Servo and Isolation Valves
Control
Pressure Gauge
Tank Charging
Drain & Cooling"

2. "4.2) The oil pressure in a steering gear must of necessity, fluctuate according to the operational requirements of the gear. These fluctuations may impair the accuracy in reading of a pressure gauge, so it is recommended that the isolating valves associated with the gauges should be kept closed, except when actual readings of the gauges are being taken."

The jury, presented with conflicting evidence, apparently chose to believe defendants' witnesses regarding the interpretation of these provisions of the manual, the permitted use of copper lines and the custom of traveling in closed waters with the isolation valve open, finding no negligence on the part of Coronation. Where the evidence is conflicting the reasonable evaluation of credibility and inference of facts should not be disturbed by the appellate court. *Rosell v. ESCO*, 549 So.2d 840 (La. 1989). The court of appeal may upset a jury's factual findings only when it is determined the fact finder was clearly wrong. *Arceneaux v. Domingue*, 365 So.2d 1330 (La. 1979). However, "where documents or objective evidence so contradict the witness's story, or that story itself is so internally inconsistent or implausible on its face that a reasonable fact-finder would not credit the witness's story, the Court of Appeal may well find manifest error or clear wrongness even in a finding purportedly based upon a credibility determination." *Rossell v. ESCO*, supra, at 844-845. Furthermore, this court is

not obliged to accept the trier of fact's verdict where it is not supported by objective evidence. See *Shroyer v. Grush*, 555 So.2d 534 (La. App. 4 Cir. 1989).

In this case, the reasonable inferences from reading the manual as a whole, along with the testimony of the witnesses, indicate the material of choice for the system was steel, not copper. Any deviation from the configuration of the original components may have been permitted, but placed a burden of inspection on defendant, because any change challenged the integrity of the system. The procedure to inspect the components was simple and would have revealed the improperly-soldered fitting. And, by admission of the chief engineer and the second engineer, they would not have permitted a soldered fitting to be used had they noticed it, but would have changed it for a more reliable fitting.

Defendant relies on the inspections made by Lloyd's and others, as well as the custom of the industry in this regard. However, neither of these factors relieve defendant of the duty to operate a safe vessel or to use a steering system in accordance with the manufacturer's specifications.

The above-mentioned principles apply to the operation of the isolation valve as well. Over time, such customary acts may have compromised its integrity. Further, had the valve been closed, it clearly would have prevented the loss of the 150 liters of fluid, and the accident would not have occurred.

In regard to the alarm systems, the evidence showed the low-level alarm either sounded too late or not at all, but was of no use in preventing the loss of steering fluid. Had it gone off timely, as intended by its design, the ship's crew could have closed the isolation valve, thus preventing the failed steering and subsequent collision. Thus, we conclude it was not set properly.

After reviewing the testimony and documents in this matter, we can arrive at no other determination than

that the jury was manifestly erroneous in its failure to find Coronation negligent. Even without the benefit of a presumption of negligence being applied to this case, we find the evidence preponderates in favor of plaintiff. Defendant owed a duty to plaintiff to protect him against the injury caused by its failure to operate a safe vessel. It breached that duty and must now compensate plaintiff for the damages he sustained.

Plaintiff claims he suffered a shattered foot bone, resulting in a permanent disability. Additionally, he asserts he suffered a disabling back injury as a result of his attempt to escape the impending collision. For these damages he requests this Court to award him $425,000 for past, present and future pain and suffering, $29,315 for reimbursement of medical expenses and $297,486 for loss of future wages.

Defendant asserts plaintiff suffered a heel injury which he exacerbated. It disputes his back injury allegation, claiming the back injury, if existing, did not result from this accident.

The alleged damages in this case involve a serious foot injury, the development of an abnormal pain reflex called reflex sympathetic dystrophy, about which little is known medically, and a low-back injury to the L5-S1 disc. The medicals are complicated and disputed. Because the jury never reached this issue in the trial court, the manifest error rule does not apply. However, in our opinion a trier of fact should properly resolve this issue. Thus, under our authority to do what is just and proper on the record in a case, we find a remand for a trial on this issue of damages to be warranted. LSA C.C.P. art. 2164.

Accordingly, the judgment of the trial court is hereby reversed and the case is remanded to the trial court for proceedings consistent with this opinion. Appellee is to pay costs of this appeal.

REVERSED AND REMANDED

APPENDIX B

THE SUPREME COURT
OF THE STATE OF LOUISIANA

No. 91-C-0103

GLENN J. CREPPEL, JR.

vs.

CORONATION SHIPPING CO.,
THENAMARIS MANAGEMENT INC. and
TERRANCE DOYLE

IN RE: Coronation Shipping Co.; United Kingdom SS Assn Bermuda;—Defendant(s); Applying for Writ of Certiorari and/or Review; to the Court of Appeal, Fifth Circuit, Number 90-CA-0425; Parish of Jefferson 24th Judicial District Court Div. "C" Number 359-213

February 22, 1991
Denied.

HTL
PFC
JLD
LFC
PH

MARCUS, J., would grant the writ.
WATSON, J., recused.

Supreme Court of Louisiana
February 22, 1991

/s/ Frans J. Labranche, Jr.
Clerk of Court
For the Court

APPENDIX C

TWENTY-FOURTH JUDICIAL DISTRICT COURT
PARISH OF JEFFERSON
STATE OF LOUISIANA

No. 359-213 Division "C"

GLENN J. CREPPEL, JR.

versus

CORONATION SHIPPING CO.,
THENAMARIS SHIP MANAGEMENT, INC.
and TERRANCE DOYLE

JURY INTERROGATORIES

1. Do you find that from a preponderance of the evidence that plaintiff, Glenn J. Creppel, Jr., sustained an injury on October 20, 1987?

   YES ✓ NO ———

   If your answer is yes, go on to question no. 2. If your answer is no, sign the end of the form and return to the Courtroom.

2. Was the defendant, Coronation Shipping Company, Inc., and their insurer, United Kingdom Mutual Steamship Assurance Association (Bermuda), Limited, negligent?

   YES ——— NO ✓

   If your answer is yes, go on to question no. 3. If your answer is no, sign the end of the form and return to the Courtroom.

3. Was plaintiff contributorially negligent in any way that proximately caused or contributed to his injury on October 20, 1987?

YES ——— NO ———

If your answer is yes, go on to question no. 4. If your answer is no, go on to question no. 4

4. Taking the combined substandard conduct that caused this accident, if any, as one hundred (100%) per cent, what percentage of that substandard conduct was attributable to Coronation Shipping Company, Inc., and their insurer, United Kingdom Mutual Steamship Assurance Association (Bermuda), Limited, if any; and what percentage of that substandard conduct, if any, was attributable to Glenn Creppel?

Percentage of substandard conduct attributable to Coronation Shipping Company, Inc., and their insurer, United Kingdom Mutual Steamship Assurance Association (Bermuda), Limited? —— %
Percentage of substandard conduct attributable to Glenn J. Creppel? —— %

5. Do you find from a preponderance of the evidence that plaintiff injured his lower right extremity on October 20, 1987?

YES ——— NO ———

Go on to question no. 6.

6. Do you find form [sic] a preponderance of the evidence that plaintiff injured his lower lumbar spine on October 20, 1987?

YES ——— NO ———

Go on to question no. 7.

7. Do you find that the defendant, Coronation Shipping Company, Inc., and their insurer, United Kingdom Mutual Steamship Assurance Association (Bermuda), Limited, acted willfully and with gross disregard of the plaintiff's rights to support an award of punitive damages?

YES ——— NO ———

If your answer to question no. 7 is yes, go on to question no. 8. If your answer to question no. 7 is no, go to question no. 10.

8. Do you find that punitive damages should be awarded against the defendant, Coronation Shipping Company, Inc., and their insurer, United Kingdom Mutual Steamship Assurance Association (Bermuda), Limited?

YES ——— NO ———

If your answer to question no. 8 is yes, go on to question no. 9. If your answer to question no. 8 is no, go to question no. 10.

9. If so, what amount should be awarded in punitive damages?

$ ———

Go on to question no. 10.

10. Fill in the amount of damages, if any, that will fairly and adequately compensate Glenn Creppel for his damages. (Do not make any reduction in amount if you have found that plaintiff was negligent. If any reduction is appropriate, the Court will make it.)

(a) The amount he is due, if any, for loss of wages from the date of the accident up to the date of this trial? $———

(b) The amount he will lose in earnings, if any, after the date of this trial? $_____

(c) The amount due him, if any, for past, present and future physical pain and suffering on account of the injury to his heel pad, os calcis, subtalar joint and/or sympathetic dystrophy? $_____

(d) The amount due him, if any, for past, present and future physical pain and suffering on account of the injury to his lumbar spine? $_____

(e) The amount you find to be due him, if any, for past, present and future mental anguish, worry and emotional distress? $_____

(f) The amount you find to be due him, if any, for past medical expenses? $_____

(g) The amount you find to be due him, if any, for future medical expenses? $_____

Foreperson: /s/ Wilbur L. Candebat, Sr.
Date: 10-4-1989

APPENDIX D

TWENTY-FOURTH JUDICIAL DISTRICT COURT
PARISH OF JEFFERSON
STATE OF LOUISIANA

No. 359-213 Division "C"

GLENN J. CREPPEL, JR.

versus

CORONATION SHIPPING COMPANY,
THENAMARIS SHIP MANAGEMENT, INC.,
and TERRANCE DOYLE

JUDGMENT

[Filed Oct. 5, 1989]

Considering the verdict rendered by the jury on 4 October 1989;

IT IS ORDERED, ADJUDGED, AND DECREED, that there be judgment in favor of defendants Coronation Shipping Company, Ltd. and The United Kingdom Steam Ship Assurance Association (BERMUDA), Ltd. and against plaintiff Glenn J. Creppel, Jr., dismissing plaintiff's complaint with prejudice, plaintiff to bear all costs.

Gretna, Louisiana, this 5 day of October, 1989.

/s/ Joseph F. Grefer
JUDGE GREFER

Respectfully submitted,

CHAFFE, MCCALL, PHILLIPS,
TOLER & SARPY

By: /s/ Robert H. Murphy
ROBERT H. MURPHY
Bar No. 9850
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Bar. No. 5682

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Attorneys for defendants,
Coronation Shipping Company,
Ltd. and The United Kingdom
Steam Ship Assurance Association
(BERMUDA), Ltd.

CERTIFICATE OF SERVICE

I certify that the foregoing has been served on counsel of record by depositing same in the U.S. Mail, postage prepaid, this 5th day of October, 1989.

/s/ Robert H. Murphy
ROBERT H. MURPHY

APPENDIX E

TWENTY-FOURTH JUDICIAL DISTRICT COURT
PARISH OF JEFFERSON
STATE OF LOUISIANA

No. 359-213
Division "C"

GLENN J. CREPPEL, JR.

VS.

CORONATION SHIPPING CO., *et al.*

FILED: January 16, 1990 [Illegible] Dy. Clerk

JUDGMENT

This matter came for hearing on a Motion for Judgment Notwithstanding the Verdict and/or a Motion for a New Trial as regularly scheduled on December 18, 1989.

Present: Phillip Boudesque and T. C. Wicker, attorneys for plaintiff.

Robert Murphy and Thomas Forbes, attorney for defendants.

After hearing the argument of counsel and considering the law and the evidence to be in favor of the defendants.

IT IS ORDERED, ADJUDGED AND DECREED that the Motion for Judgment Notwithstanding the Verdict and the Motion for a New Trial are denied.

JUDGMENT READ, RENDERED AND SIGNED in Open Court in Gretna, Louisiana, this 16 day of January, 1990.

/s/ Joseph F. Grefer
Judge